



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Date : 29/03/2023

PRESENT

The Hon`ble Mr.Justice G.K.ILANTHIRAIYAN

CRL OP(MD). Nos.4902 and 5799 of 2023

1.Shayamsundar	... Petitioner / Accused No.5 in Crl.O.P. (MD) No.4902 of 2023
2.Vignesh @ Vicky	... Petitioner / Accused No.3 in Crl.O.P. (MD) No.5799 of 2023

Vs

State rep by its
The Inspector of Police,
Thiruppallai Police Station,
Madurai City,
Madurai.

(In Crime No.168 of 2022) ... Respondent/ Complainant
in both CRL OPs

For Petitioner (in Crl.O.P. (MD) No.4902 of 2023)
: Mr.M.Chandrabose, Advocate.

For Petitioner (in Crl.O.P. (MD) No.5799 of 2023)
: Mr.M.Pitchai Muthu, Advocate.

For Respondent (in both petitions)
: Mr.T.Senthilkumar,
Additional Public Prosecutor

PETITIONS FOR BAIL Under Sec.439 of Cr.P.C.

COMMON PRAYER :-

For Bail in Crime No.168/2022 on the file of the respondent police.

COMMON ORDER : The Court made the following order :-

The petitioners/A5 and A3 who were arrested and remanded to judicial custody on 04.08.2022 (A5) and 05.08.2022(A3) for the offences punishable under Sections 8(c) r/w 20(b)(ii)(C), 25, 29(1) and 25(1)(a) of NDPS Act in Crime No.168 of 2022 on the file of the respondent police, seek bail.

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2.The case of the prosecution is that on 04.08.2022 at about 09.00 p.m., based on the secret information, the respondent police conducted vehicle checkup and they found A1 in a two-wheeler. On seeing the police, he fled away from the place. On suspicion, the respondent police caught hold A1 and seized 10kgs of Ganja from him. Further investigation, A1 confessed about the involvement of the other accused persons. Based on his confession, the respondent police conducted search at A1's house, wherein, the respondent police recovered another 30kgs of Ganja. Totally 40kgs of Ganja was recovered in the present case. Hence, the case.

3.The learned counsel for the petitioners would submit that the petitioners are arrayed as A5 and A3. Even according to the case of the prosecution, on the confession statement of the first accused, the petitioners have been implicated as accused. The first accused was already arrested with contraband weighing 10kgs of Ganja. After recording his confession, the respondent police went to the first accused's house along with A1 and recovered another 30kgs of Ganja. Based on his confession, the petitioners along with other accused persons were implicated as accused. Though the petitioners were named accused in the FIR, there was no recovery from them. Except the confession, no material was available to show that the petitioners were went along with A1 to purchase the contraband at Andhra Pradesh. Hence, he would seek for bail.

4.The learned Additional Public Prosecutor would submit that A3's application for bail was also dismissed by this Court by order dated 22.11.2022 in Crl.O.P.(MD)No.19490 of 2022. A5 has also involved in one previous case for the offence under Section 307 IPC. All the accused persons were doing Ganja business together. They used to go to Andhra Pradesh in order to purchase contraband. Though on the date of occurrence, the petitioners were not present along with A1, they are also doing Ganja business along with A1. He would further submit that the investigation has been completed and the final report has already been filed before the learned Principal Special Court for NDPS Act Cases, Madurai and the same has been taken cognizance in C.C.No.81 of 2023. Hence, he opposed to grant bail to the petitioners.

5.It is seen from the records that the first accused has already been arrested with contraband weighing 10kgs of Ganja. On his confession, the respondent police went to the house of the first accused and seized 30kgs of Ganja. Admittedly, the petitioners were not present along with the first accused at the time of seizure of contraband. On perusal of the confession statement of the first accused also reveals that except purchasing of Ganja from Andhra Pradesh along with the other accused persons, there is absolutely no material to connect the petitioners along with the first accused. The prosecution has also failed to produce any material to connect the petitioners with the first accused. Admittedly, there was no



recovery from the petitioners and they have also implied as accused only on the strength of the confession statement of the first accused. Except the present case, A3 had no previous antecedents and insofar as the fifth accused is concerned, he had involved in one previous case for the offence under Section 307 IPC. Therefore, the petitioners made a prima facie case to satisfy the twin conditions as contemplated under Section 37 of NDPS Act.

6. Considering the above facts and circumstances of the case and also considering the period of incarceration, this court is inclined to grant bail to the petitioners subject to the following conditions:

[a] Accordingly, the petitioners are ordered to be released on bail on condition to execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each with two blood related sureties each for a like sum to the satisfaction of the learned Principal Special Court for NDPS Act Cases, Madurai, and on further conditions that:

[b] the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity.

[c] the petitioners shall report before the learned Principal Special Court for NDPS Act Cases, Madurai in C.C.No.81 of 2023 daily at 10.30 a.m., until further orders;

[d] the petitioners shall not commit any offences of similar nature.

[e] the petitioners shall not abscond either during investigation or trial.

[f] the petitioners shall not tamper with evidence or witness either during investigation or trial.

[g] On breach of any of the aforesaid conditions, the learned Judicial Magistrate/Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].

[h] If the accused thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

sd/-

29/03/2023

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29/03/2023

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



To

1.The Additional District Judge,
Principal Special for Trial of NDPS Act Cases, Madurai.

2.The Inspector of Police,
Thiruppalai Police Station,
Madurai City, Madurai.

3.The Superintendent,
Central Prison,
Madurai.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.CHANRABOSE M, Advocate (SR-5117[I] dated 29/03/2023)

+1 CC to M/s.M.PITCHAI MUTHU, Advocate (SR-5065[I] dated 29/03/2023)

ORDER

IN

CRL OP (MD) No.4902

and 5799 of 2023

Date :29/03/2023

ED/SBN/SAR- (29/03/2023) 4P 7C